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78-1932
No.

In the
Supreme Court of the United States

NORTHERN ILLINOIS AUTOMOBILE WRECKERS
AND REBUILDERS ASSOCIATION, an Illinois Not-
For-Profit Corporation, and SOUTH CHICAGO AUTO
PARTS, INC., an Illinois corporation,

Plaintiffs-Petitioners,

vs.

ALAN J. DIXON, Secretary of State of Illinois,
Defendant-Respondent.

PETITION FOR WRIT OF CERTIORARI

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v.s.

ALAN J. DIXON, Secretary of State of Illinois,

Defendant-Respondent.

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OPINIONS BELOW

Northern Illinois Automobile Wreckers and Rebuilders Assn. et al v. Dixon, 387 N.E. 320, 75 Ill. 2d 53 (1979), rehearing denied March 30, 1979, No. 51179.

JURISDICTION

On September 12, 1978 Judge Raymond K. Berg of the Circuit Court of Cook County, Illinois declared the Secretary of State's Administrative Rule 5-401A unconstitutional and permanently enjoined its enforcement.

On January 26, 1979 The Illinois Supreme Court reversed the judgment of the Circuit Court.

On March 30, 1979 The Illinois Supreme Court denied the Petition for Rehearing.

Jurisdiction is conferred on this Court by 28 U.S.C.A. §§ 2101 (e) and 2104.

QUESTION PRESENTED FOR REVIEW

Did the promulgation of Administrative Rule 5-401A exceed the Secretary of State's rule making authority and deny petitioners due process of law.

APPLICABLE PROVISIONS

Amendment V. Constitution of The United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV. Section 1, Constitution of The United States:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

95½ Ill. Rev. Stat. § 5-401:

§ 5-401. Licensees required to keep records

(a) Every person licensed under Chapter 5 of this Act shall maintain for 3 years, in such form as the Secretary of State may by rule or regulation prescribe, at his principal place of business a record of:

1. Every new or used vehicle, used parts or accessories, body, or engine of or for such vehicle purchased, received, or acquired by him, a description of every said vehicle part or accessory including numbers of or other marks of identification, if any, together with the date and the names and addresses of the person from whom each such vehicle, part or accessory was purchased, received or acquired. In the case of a motor vehicle, such description shall also include the trade name, the name of the maker, type, engine and serial number and vehicle identification number in lieu of the engine and serial number and other distinguishing marks, and whether any number thereon have been defaced, destroyed or changed;

2. Every new or used vehicle, body, chassis or engine of or for such motor vehicle sold, exchanged, or disposed of by him, including numbers of or other marks of identification, if any, together with the date and the names and addresses of the persons to whom each vehicle was sold, exchanged, or disposed of by him. In the case of motor vehicles, such description shall also include the trade name, the name of the maker, type, engine and serial number and vehicle identification number in lieu of the engine and serial number and other distinguishing marks and whether any numbers thereon have been defaced, destroyed or changed;

3. Every vehicle wrecked, dismantled or rebuilt by him and the date of its wrecking, dismantling or rebuilding;

(b) Every licensee shall have in his possession a separate certificate of title assigned to him or other documentary evidence of his right to possession of and for every vehicle, part or accessory in his possession.

(c) Every licensee shall have in his possession a separate salvage certificate issued to him as evidence of his right to possession of any vehicle in his possession.

(d) Every person licensed as a transporter under Chapter 5 of this Act shall maintain for 3 years in such form as the Secretary of State may by rule or regulation prescribe at his principal place of business a record of every vehicle transported by him, including numbers of or other marks of identification thereof, the names and addresses of the persons from whom and to whom such vehicle was delivered and the dates thereof.

(e) Every record required to be maintained under this Section shall be opened to inspection by the Secretary of State or his authorized representative or any peace officer for inspection at any reasonable time during the night or day.

Administrative Rule 5-401A:

Rule 5-401A — Required Records For Used Parts Dealers, Scrap Processors, Automotive Parts Recyclers And Rebuilders

Each person or firm licensed pursuant to Section 5-301 of the Illinois Vehicle Code is required to maintain for a period of three years subsequent to the acquisition, disposal, wrecking, rebuilding or scraping of vehicles or parts thereof, a uniform record of such transactions at his principal place of business. Such records shall be kept in a ledger commonly referred to as a "Police Book". The "Police Book" shall be a double entry type ledger reflecting the required in-

formation at the time of acquisition and at the time of disposal. The required information shall be, but without limitation, as required hereunder.

1. Upon the Purchase, Receipt or Acquisition of Vehicles, Parts, Bodies or Engines, the following information must be recorded.

- A. The name, address, and verification of same, of the person from whom acquired. Verification shall be by Driver's License, or if none, then State Identification Card, or if none, other reliable identification.
 - B. The date and type of acquisition (i.e. sale, exchange, etc.)
 - C. The purchase price and type of payment (check, cash, etc.)
 - D. A description of the vehicle or part, including:
 1. The year, make and model;
 2. Engine serial number if applicable;
 3. Vehicle serial number if applicable;
 4. The year, make, model and manufacturer's identification number of the vehicle from which the part was removed.
 - E. Any other identifying marks or numbers.
 - F. Documentary proof of ownership (eg. title, notarized bill of sale, salvage certificate or junking title) and appropriate title number.
 - G. Whether any serial number or other identifying mark of the manufacturer or Secretary of State has been altered, defaced or removed.
2. It shall be the responsibility of every licensee hereunder to inspect every vehicle or part acquired. If there is any evidence that any serial number thereon has been removed, altered, defaced or destroyed, the licensee shall notify the Secretary of State.
 3. Upon the sale, exchange or other disposition of vehicles, bodies, chassis, engines or parts, the following information must be recorded:

- A. The name, and address of the person to whom sold or transferred;
- B. The date and type of transfer; (i.e. sales, exchange, etc.)
- C. The sales price and type of payment;
- D. A description of the vehicle, body, chassis, engine or part including:
 1. The year, make and model;
 2. The engine serial number if applicable;
 3. The vehicle serial number if applicable;
 4. Any other identifying marks or numbers;
- E. The title, salvage certificate, or junking title assigned, or other ownership document given.
- 4. "Parts" shall include vehicle hulls, vehicle frames, and all essential parts and component parts as defined in the Illinois Vehicle Code, such as slips, doors, fenders, differentials, frames, transmissions, etc. "Parts" does not include carburetors, generators, radiators, steering wheels, etc.
- 5. Separate records for each vehicle or part shall be kept. Such records shall be clearly legible and open for inspection at any reasonable time by any authorized representative of the Secretary of State or any peace officer. The Secretary of State may prescribe forms for the maintenance of such records.
- 6. Any person or firm who violates or fails to comply with the provisions of this rule may have his license denied, revoked or suspended in accordance with Section 5-501 of the Illinois Vehicle Code.

STATEMENT OF THE CASE

On August 18, 1978, petitioner Northern Illinois Automobile Wreckers and Rebuilders Association, filed a Complaint against Alan J. Dixon, Secretary of State of Illinois, seeking an injunction to restrain him from implementing or enforcing Administrative Rule 5-401A and

seeking a declaration that Rule 5-401A is in violation of the Illinois Constitution and The Constitution of the United States of America. On September 7, 1978 an Amended Complaint was filed to add South Chicago Auto Parts, Inc. as a party plaintiff.

Petitioners are a trade association composed of business entities which are required to be licensed under Section 5-301 of the Illinois Vehicle Code, 95-5 Ill. Rev. Stat. 5-301, and a corporation so licensed. Respondent, the Secretary of State, is empowered to administer the Motor Vehicle Code and as administrator promulgated Rule 5-401A on August 8, 1978. This Rule requires those licensed under Section 5-301 of the Motor Vehicle Code, including used parts dealers, scrap processors and automotive parts recyclers and rebuilders, to maintain detailed records of certain information regarding the acquisition and disposition of vehicles and parts.

The Amended Complaint charged that "[t]he RULE violates the Illinois Constitution of 1970 and the Fifth and Fourteenth Amendments to the United States Constitution in that it is vague, uncertain and ambiguous and subjects LICENSEES to threats of denial, revocation or suspension of their licenses and to threats of fine and imprisonment in the event they fail to comply" with the Rule (paragraph 6); that the Secretary of State "exceeded the authority conferred upon him by Section 5-401" of the Motor Vehicle Code (paragraph 8); and that enforcement of the Rule will deprive petitioners of due process of law. Based upon these allegations, petitioners requested a declaration that the Rule is invalid and an injunction restraining its enforcement.

A final judgment was entered by the trial court on September 12, 1978 declaring that Administrative Rule

5-401A is unconstitutional and void, that the Secretary of State exceeded the authority delegated to him under the Illinois Motor Vehicle Code; and that the Secretary of State was permanently enjoined from implementing and enforcing Administrative Rule 5-401A.

Respondent took a direct appeal to the Illinois Supreme Court under its Rule 302(b) (58 Ill. 2d R. 302(b).) On January 26, 1979 the Illinois Supreme Court reversed the judgment of the trial court. The court held, *inter alia*, that the Secretary of State did not exceed his statutory authority in requiring licensees under the Motor Vehicle Code to keep records of information not specifically required by Section 5-401 of the Motor Vehicle Code because the additional requirements in the Rule "are merely incidental to or are otherwise in the same category as and similar to the statutory requirements." (387 N.E. 2d 320) On February 16, 1979 petitioners filed a Petition for Rehearing which the Illinois Supreme Court denied on March 30, 1979.

ARGUMENT

In reversing the judgment of the trial court the Illinois Supreme Court upheld all of the provisions of the Secretary of State's Administrative Rule 5-401A. In so doing the court sanctioned a *de facto* change in the Motor Vehicle Code which was achieved under paragraph 1 (f) of the Administrative Rule.

As the Illinois Supreme Court's opinion repeatedly states, the Administrative Rule and the authorizing statute (95½ Ill. Rev. Stat. 5-401) are supposedly directed only at the type of information which licensees are required to keep in the purchase and sale of vehicles and vehicle parts. In comparing the regulation with the statutory grant of authority, the court concluded that the regulation did, at best, only expand the informational requirements of the statute. And because it found that such requirements were "merely incidental to or are otherwise in the same category as and similar to the statutory requirements," the court found the Administrative Rule to be constitutionally sound.

In reaching this conclusion, the court's opinion does not specifically address paragraph 1(f) of the Administrative Rule. That paragraph, which requires the licensee to record certain "information" in addition to that specifically set forth in the statute, reads as follows:

1. Upon the Purchase, Receipt or acquisition of Vehicles, Parts, Bodies or Engines, the following information must be recorded:

* * *

F. Documentary proof of ownership (e.g. title, notarized bill of sale, salvage certificate or junking title) and appropriate title number.

This provision is most definitely *not* "merely incidental to or otherwise in the same category" as the statutory informational requirements of paragraph 5-401. The statute merely requires the recordation of information which is solely and exclusively ascertainable from the transaction itself; that is, a description of the part and a description of the sale. There is absolutely nothing in the statute which suggests any further requirement upon the licensee to investigate facts and circumstances of the transaction, other than facts immediately discernable from the part itself (e.g. make, model and serial number) and identification of the seller (e.g. name and address). In particular, the Illinois legislature did not require the licensee to ascertain or verify the ownership of the vehicle or part as a precondition to its purchase, although the legislature was quite capable of doing so.

Although this provision purports merely to classify additional categories of information, its effect is to prohibit any purchase of a vehicle or part by a licensee unless the seller has and can present to the licensee title to the car or other "documentary proof of ownership." If such information cannot be presented, then the licensee cannot record this "information," and by failing to do so, he is in violation of the statute (a Class A misdemeanor). The effect of this "informational" requirement is to amend the section of the Motor Vehicle Code dealing with offenses relating to motor vehicles to add a *de facto* new offense, the offense of buying a vehicle or vehicle part without first being provided with a copy of the vehicle title.

By enacting this Administrative Regulation, the Secretary of State, purportedly under his administrative authority to prescribe merely the form of records, has substituted his judgment for the judgment of the legislature by creating a new class of prohibited activity. Such abuse of the rule-making authority plainly denies petitioners due process of law.

CONCLUSION

Petitioners, Northern Illinois Automobile Wreckers and Rebuilders Association and South Chicago Auto Parts, Inc. respectfully request that this Court grant a writ of certiorari to review the judgment of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department, Chancery Division

No. 78 CH 5395

NORTHERN ILLINOIS AUTOMOBILE WRECKERS AND REBUILDERS
ASSOCIATION, an Illinois Not-For-Profit Corporation, and
SOUTH CHICAGO AUTO PARTS, INC., an Illinois Corporation,
Plaintiffs,

vs.

ALAN J. DIXON, Secretary of State of Illinois,

Defendant.

JUDGMENT ORDER
(Filed Sep 12 1978)

This cause coming on to be heard on Plaintiffs' motion for preliminary injunction and Defendant's motion to strike and dismiss Plaintiffs' Amended Complaint, the Court having jurisdiction over the parties and subject matter, having heard the arguments of counsel and being fully advised in the premises, FINDS:

1. There is standing on the part of SOUTH CHICAGO AUTO PARTS, INC. to bring this action.
2. This controversy is ripe for adjudication.
3. Plaintiffs need not exhaust their administrative remedies, since Administrative Rule 5-401A is attacked on its face.
4. Administrative Rule 5-401A is unenforceable, vague and over-broad.
5. In promulgating Rule 5-401A, the Secretary of State exceeded the authority delegated to him under the Illinois Vehicle Code.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- (a) Defendant's motion to strike and dismiss Plaintiffs' Complaint shall stand as Defendant's motion to strike and dismiss Plaintiff's Amended Complaint.

(b) Defendant's motion to strike and dismiss Plaintiffs' Amended Complaint be and the same is hereby denied.

(c) Administrative Rule 5-401A is hereby declared unconstitutional and void, and judgment be and is hereby entered in favor of Plaintiffs and against Defendant accordingly.

(d) A writ of injunction be issued in this cause by the Clerk of this Court permanently enjoining Defendant, ALAN J. DIXON, as Secretary of State of Illinois, his attorneys, agents, servants and employees of and from implementing and enforcing Administrative Rule 5-401A.

(e) There is no just reason to delay enforcement of or appeal from this Order.

ENTER:

/s/ Raymond K. Berg
Judge

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OPINION

SUPREME COURT
OF ILLINOIS
UNITED STATES OF AMERICA

State of Illinois)
)
 ss.
Supreme Court)

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eighth day of January

in the year of our Lord, one thousand nine hundred and seventy-nine, within and for the State of Illinois.

PRESENT: JOSEPH H. GOLDENHORN, CHIEF JUSTICE

JUSTICE ROBERT C. UNDERWOOD
JUSTICE HOWARD C. RYAN
JUSTICE THOMAS J. MORAN
JUSTICE DANIEL P. WARD
JUSTICE WILLIAM G. CLARK
JUSTICE THOMAS E. KLUCZYNKI
WILLIAM J. SCOTT, ATTORNEY GENERAL
LOUIE F. DEAN, MARSHAL
ATTEST: CLELL L. WOODS, CLERK

BE IT REMEMBERED, that afterwards, to-wit, on the 26th day of January, 1979, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 51179

NORTHERN ILLINOIS AUTOMOBILE WRECKERS AND REBUILDERS ASSOCIATION; an Illinois Not-For-Profit Corporation, and SOUTH CHICAGO AUTO PARTS, INC., an Illinois Corporation, et al., etc.,

Appellees

vs.

ALAN J. DIXON, Secretary of State of Illinois,

Appellant

Appeal from Circuit Court Cook County

Docket No. 51179—Agenda 29—November 1978.

NORTHERN ILLINOIS AUTOMOBILE WRECKERS AND REBUILDERS ASSOCIATION *et al.*, Appellees, v. ALAN J. DIXON, Secretary of State, Appellant.

Mr. JUSTICE MORAN delivered the opinion of the court:

Defendant has brought this direct appeal under Supreme Court Rule 302(b) (58 Ill. 2d R. 302(b)) from an order of the circuit court of Cook County. The order declared the Secretary of State's Administrative Rule

5—401A unconstitutional and void, and enjoined its enforcement.

Plaintiffs are a trade association composed of business entities which are required to be licensed under section 5—301 of the Illinois Vehicle Code (Code) (Ill. Rev. Stat. 1977, ch. 95½, par. 5—301) and a corporation so licensed. Defendant, the Secretary of State, is empowered under section 2—101 of the Code (Ill. Rev. Stat. 1977, ch. 95½, par. 2—101) to administer chapters 2 through 9 of the Code, and, as administrator, promulgated Rule 5—401A in August 1978. The rule requires those licensed under section 5—301 of the Code, including used parts dealers, scrap processors, and automotive parts recyclers and rebuilders, to maintain records of certain information on the acquisition and disposition of vehicles and parts.

Shortly after the rule was promulgated, plaintiffs brought an action for declaratory judgment and injunctive relief. This appeal followed a judgment for the plaintiffs. At issue here are the questions of (1) whether Rule 5—401A is unconstitutionally vague under the due process clauses of the Illinois Constitution and the fifth and fourteenth amendments to the United States Constitution, and (2) whether defendant exceeded his statutory authority in promulgating the rule.

Rule 5—401A states in pertinent part:

"Each person or firm licensed pursuant to Section 5—301 of the Illinois Vehicle Code is required to maintain for a period of three years subsequent to the acquisition, disposal, wrecking, rebuilding or scraping [sic] of vehicles or parts thereof, a uniform record of such transactions at his principal place of business. * * *

1. Upon the Purchase, Receipt or Acquisition of Vehicles, Parts, Bodies or Engines, the following information must be recorded.

A. The name, address, and verification of same, of the person from whom acquired. Verification

shall be by Driver's License, or if none, then State Identification Card, or if none, other reliable identification.

B. The date and type of acquisition (i.e., sale, exchange, etc.)

C. The purchase price and type of payment (check, cash, etc.)

D. A description of the vehicle or part, including:

1. The year, make and model;
2. Engine serial number if applicable;
3. Vehicle serial number if applicable;
4. The year, make, model and manufacturer's identification number of the vehicle from which the part was removed.

E. Any other identifying marks or numbers.

F. Documentary proof of ownership (e.g., title, notarized bill of sale, salvage certificate or junking title) and appropriate title number.

G. Whether any serial number or other identifying mark of the manufacturer or Secretary of State has been altered, defaced or removed.

2. It shall be the responsibility of every licensee hereunder to inspect every vehicle or part acquired. If there is any evidence that any serial number thereon has been removed, altered, defaced or destroyed, the licensee shall notify the Secretary of State.

3. Upon the sale, exchange or other disposition of vehicles, bodies, chassis, engines or parts, the following information must be recorded:

- A. The name, and address of the person to whom sold or transferred;
- B. The date and type of transfer; (i.e. sales, exchange, etc.)
- C. The sales price and type of payment;
- D. A description of the vehicle, body, chassis, engine or part including:

1. The year, make and model;
2. The engine serial number if applicable;
3. The vehicle serial number if applicable;
4. Any other identifying marks or numbers;

E. The title, salvage certificate, or junking title assigned, or other ownership document given.

4. 'Parts' shall include vehicle hulls, vehicle frames, and all essential parts and component parts as defined in the Illinois Vehicle Code, such as clips, doors, fenders, differentials, frames, transmissions, etc. 'Parts' does not include carburetors generators, radiators, steering wheels, etc."

Defendant contends that Rule 5—401A has sufficient certainty to afford plaintiffs due process. We note at the outset that administrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes. (*DeGrazio v. Civil Service Com.* (1964), 31 Ill. 2d 482, 485; 2 Am. Jur. 2d *Administrative Law* sec. 298 (1962).) Like a statute, an administrative rule or regulation enjoys a presumption of validity. *People ex rel. Colletti v. Pate* (1964), 31 Ill. 2d 354, 359.

To comport with due process, the language must be sufficiently certain to apprise those to whom it is directed of the duty imposed. (*Stein v. Howlett* (1972), 52 Ill. 2d 570, 579-80; *Jaffe v. Cruttenden* (1952), 412 Ill. 606, 609; *People ex rel. Duffy v. Hurley* (1949), 402 Ill. 562, 567.) Where the words and phrases have a technical or special meaning commonly understood by those subject to the rule, the certainty requirement is satisfied. (*People ex rel. Spitzer v. County of La Salle* (1960), 20 Ill. 2d 18, 27; *Vallat v. Radium Dial Co.* (1935), 360 Ill. 407, 411-12.) To determine whether the language is sufficiently certain, we cannot and need not pass upon all hypothetical situations that may or may not arise. *Stein v. Howlett* (1972), 52 Ill. 2d 570, 580-81; *Wadlington v. Mindes* (1970), 45 Ill. 2d 447, 458.

Plaintiffs cite the following words and phrases as vague: (1) "other reliable identification" contained in section 1—A; (2) "from which the part was removed" in section 1—D; (3) "[a]ny other identifying marks or numbers" in section 1—E; (4) "the licensee shall notify the Secretary of State" in section 2; (5) "[a]ny other identifying marks or numbers" in section 3—D(4); and (6) "[p]arts" in section 4. With the aforementioned principles in mind, we have considered plaintiff's arguments relative to the asserted vagueness of phrases (1) through (5) above, and, without discussing each phrase separately, conclude that plaintiffs have not met their burden of establishing that the language is unconstitutionally vague.

Relative to the word "parts" in phrase (6), plaintiffs argue that they can only guess as to what items are to be included. "Parts," in section 4 of Rule 5—401A incorporates the statutory definitions of "essential parts" and "component parts." Section 1—118 of the Code defines "essential parts" as "[a]ll integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation." (Ill. Rev. Stat. 1977, ch. 95½, par. 1—118.) Section 4—100 defines "component parts" as "[a]ny part of a vehicle, other than a tire, having a manufacturer's identification number or an identification number issued by the Secretary of State." (Ill. Rev. Stat. 1977, ch. 95½, par. 4—100.) It is evident that the "parts" covered by these definitions are those important to the *identification* of a particular vehicle, and not those which are merely incidental to its operability. Such parts presumably are within the special knowledge of those who, like plaintiffs, are in the automotive parts industry. Plaintiffs contend that, under the last sentence of the rule's section 4, it is unclear what parts are excluded from the record-keeping requirements. It is defendant's interpretation, however, that the exclusion was meant to encompass all parts other than "essential" and "component" parts. It is a court's task to construe a statute or rule,

if consistent with the legislative intent, in a manner compatible with constitutional limitations. (*United States Civil Service Com. v. National Association of Letter Carriers* (1973), 413 U.S. 548, 571, 37 L. Ed. 2d 795, 812, 93 S. Ct. 2880, 2893.) We conclude, as did the defendant, that "parts," in section 4 of the rule, is intended to include only "essential" and "component" parts as defined in the Code. The language, in our opinion, is sufficiently clear and comprehensible to those in the trade.

In sum, taking into account the context in which each challenged word and phrase appears, we are of the opinion that the rule sufficiently informs those in plaintiffs' business of the records which they are required to keep, and that they are not, therefore, denied due process of law.

Defendant contends that he did not exceed his statutory authority in promulgating Rule 5—401A. Administrative rules and regulations must be authorized by statute. (*Bio-Medical Laboratories, Inc. v. Trainor* (1977), 68 Ill. 2d 540, 551.) Furthermore, a statute may not be altered or added to by the exercise of a power to make rules and regulations thereunder. *Ruby Chevrolet, Inc. v. Department of Revenue* (1955), 6 Ill. 2d 147, 151.

As stated, section 2—101 empowers defendant to administer chapters 2 through 9 of the Code. Section 2—104 (a) (Ill. Rev. Stat. 1977, ch. 95½, par. 2—104(a)) also charges defendant with the duty of "observing, administering and enforcing" the same chapters. Section 2—104(b) further states:

"The Secretary may from time to time make, amend, and rescind such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act * * *." (Ill. Rev. Stat. 1977, ch. 95½, par. 2—104(b).)

Rule 5—401A was patterned after section 5—401 of the Code, which sets forth certain record-keeping requirements for persons licensed under section 5—301 "in such form as the Secretary of State may by rule or regulation pre-

scribe" (Ill. Rev. Stat. 1977, ch. 95½, par. 5—401). Plaintiffs argue that this quoted phrase restricts defendant from imposing on licensees record-keeping requirements for any items other than those specifically enumerated in section 5—401; that, because some of the items that Rule 5—401A requires licensees to keep records of are not specifically included in section 5—401 of the Code, defendant has exceeded his statutory authority. As an example, plaintiffs point out that section 1—C of the rule requires licensees to record the purchase price and type of payment upon the acquisition of vehicles or parts, while section 5—401(a) of the Code is silent on these points.

The grant of powers to defendant in section 2—104(b) is couched in broad language. In interpreting this language to determine the scope of the grant, it is important to consider the purpose of the legislation. (*See Federal Trade Com. v. Mandel Bros.* (1959), 359 U.S. 385, 388-89, 3 L. Ed. 2d 893, 896-97, 79 S. Ct. 818, 821-22.) The predecessor of section 5—401 of the Code was section 14 of the Uniform Motor Vehicle Anti-Theft Act (Ill. Rev. Stat. 1955, ch. 95½, par. 87), the purpose of which was to facilitate the discovery and prevention of automobile thefts (*People v. Allen* (1950), 407 Ill. 596, 599, *cert. denied* (1951), 341 U.S. 922, 95 L. Ed. 1355, 71 S. Ct. 739). This court recognized at an early date the strong public policy in favor of preventing automobile thefts. (*People v. Billardello* (1925), 319 Ill. 124.) Rule 5—401A is consistent with and furthers the purpose of the statute, and is within the "public interest" as that term is used in section 2—104(b) of the Code. At the time the statute was enacted, the legislature could not realistically foresee and spell out in detail every specific piece of information that would be necessary or helpful to further the purpose of the statute. (*See American Trucking Associations v. United States* (1953), 344 U.S. 298, 309-10, 97 L. Ed. 337, 355, 73 S. Ct. 307, 314.) Nowhere in section 5—401 of the Code is there an indication that the items specifically listed were intended to be exclusive. Subsection (a)(1), for example,

requires a record of a description of vehicles and parts acquired by the licensee, "including numbers of or other marks of identification." (Emphasis added.) (Ill. Rev. Stat. 1977, ch. 95½, par. 5—401(a)(1).) Moreover, section 5—501(a)(6) of the Code provides that a license may be denied, revoked, or suspended if the licensee has "[f]ailed to file or produce for the Secretary of State any application, report, document or other pertinent books, records, documents, letters, contracts, required to be filed or produced under this Chapter or any rule or regulation made by the Secretary of State pursuant to this Chapter." (Emphasis added.) (Ill. Rev. Stat. 1977, ch. 95½, par. 5—501(a)(6).) This provision reveals that the legislature contemplated that defendant may require records of information other than those items specifically enumerated in section 5—401.

Most of the information that Rule 5—401A requires licensees to record is specifically included in section 5—401 of the Code. The remaining informational requirements contained in the rule are merely incidental to or are otherwise in the same category as and similar to the statutory requirements. This is not the case of an administrative rule being in "clear contravention of the spirit and letter of the act" (*Ruby Chevrolet, Inc. v. Department of Revenue* (1955), 6 Ill. 2d 147, 151). We conclude, therefore, that the promulgation of Rule 5—401A was within defendant's delegated statutory authority.

For the foregoing reasons, the judgment of the circuit court is reversed.

Judgment reversed.

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

ILLINOIS SUPREME COURT
Clell L. Woods, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

March 30, 1979

Feiwell, Galper &
Lasky, Ltd.
Attorneys at Law
33 N. LaSalle St.
Chicago, IL 60602

No. 51179 - Northern Illinois Automobile Wreckers and Rebuilders Association, an Illinois Not-For-Profit Corporation, et al., etc., appellees, vs. Alan J. Dixon, Secretary of State of Illinois, appellant. Appeal, Circuit Court (Cook).

The Supreme Court today denied the petition for rehearing in the above entitled cause. Mr. Justice Clark took no part.

Very truly yours,

/s/ Clell L. Woods
Clerk of the Supreme Court

JUL 25 1979

MICHAEL RODAK, JR., CLERK

No. 78-1932

IN THE
SUPREME COURT OF THE UNITED STATES

NORTHERN ILLINOIS AUTOMOBILE WRECKERS AND REBUILDERS ASSOCIATION, an Illinois Not-For-Profit Corporation, and SOUTH CHICAGO AUTO PARTS, INC., an Illinois corporation,

Plaintiffs-Petitioners,

vs.

ALAN J. DIXON, Secretary of State of Illinois,

Defendant-Respondent.

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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ADMINISTRATIVE REGULATION INVOLVED**Cross References**

- Sec. 1-118 — Essential parts
Sec. 3-117 — Scraping, junking or destroying vehicles
Sec. 4-100 — Definitions
Sec. 4-102 — Offenses relating to motor vehicles and other vehicles
Sec. 4-106 — Principals
Sec. 4-107 — Stolen, converted, recovered and unclaimed vehicles
Sec. 5-100 — Definitions
Sec. 5-201 — Transporters must apply for in-transit plates
Sec. 5-301 — Used parts dealers, scrap processors, automotive parts recyclers and rebuilders must be licensed
Sec. 5-401 — Licensees required to keep records
Rule 5-401A — *Required Records For Used Parts Dealers, Scrap Processors, Automotive Parts Recyclers And Rebuilders*

Each person or firm licensed pursuant to Section 5-301 of the Illinois Vehicle Code is required to maintain for a period of three years subsequent to the acquisition, disposal, wrecking, rebuilding or scraping of vehicles or parts thereof, a uniform record of such transactions at his principal place of business. Such records shall be kept in a ledger commonly referred to as a "Police Book". The "Police Book" shall be a double entry type ledger reflecting the required information at the time of acquisition and at the time of disposal. The required information shall be, but without limitation, as required hereunder.

1. Upon the Purchase, Receipt or Acquisition of Vehicles, Parts, Bodies or Engines, the following information must be recorded.

- A. The name, address, and verification of same, of the person from whom acquired. Verification shall be by Driver's License, or if none, then State Identification Card, or if none, other reliable identification.
 - B. The date and type of acquisition (i.e. sale, exchange, etc.)
 - C. The purchase price and type of payment (check, cash, etc.)
 - D. A description of the vehicle or part, including:
 - 1. The year, make and model;
 - 2. Engine serial number if applicable;
 - 3. Vehicle serial number if applicable;
 - 4. The year, make, model and manufacturer's identification number of the vehicle from which the part was removed.
 - E. Any other identifying marks or numbers.
 - F. Documentary proof of ownership (eg. title, notarized bill of sale, salvage certificate or junking title) and appropriate title number.
 - G. Whether any serial number or other identifying mark of the manufacturer or Secretary of State has been altered, defaced or removed.
2. It shall be the responsibility of every licensee hereunder to inspect every vehicle or part acquired. If there is any evidence that any serial number thereon has been removed, altered, defaced or destroyed, the licensee shall notify the Secretary of State.
3. Upon the sale, exchange or other disposition of vehicles, bodies, chassis, engines or parts, the following information must be recorded.
- A. The name, and address of the person to whom sold or transferred;
 - B. The date and type of transfer; (i.e. sales, exchange, etc.)
 - C. The sales price and type of payment;
 - D. A description of the vehicle, body, chassis, engine or part including:

- 1. The year, make and model;
- 2. The engine serial number if applicable;
- 3. The vehicle serial number if applicable;
- 4. Any other identifying marks or numbers;
- E. The title, salvage certificate, or junking title assigned, or other ownership document given.
- 4. "Parts" shall include vehicle hulls, vehicle frames, and all essential parts and component parts as defined in the Illinois Vehicle Code, such as clips, doors, fenders, differentials, frames, transmissions, etc. "Parts" does not include carburetors, generators, radiators, steering wheels, etc.
- 5. Separate records for each vehicle or part shall be kept. Such records shall be clearly legible and open for inspection at any reasonable time by any authorized representative of the Secretary of State or any peace officer. The Secretary of State may prescribe forms for the maintenance of such records.
- 6. Any person or firm who violates or fails to comply with the provisions of this rule may have his license denied, revoked or suspended in accordance with Section 5-501 of the Illinois Vehicle Code.

III. Rev. Stat. 1975, ch. 95½, § 5-401:

Licensees required to keep records. (a) Every person licensed under Chapter 5 of this Act shall maintain for 3 years, in such form as the Secretary of State may by rule or regulation prescribe, at his principal place of business a record of:

- 1. Every new or used vehicle, used parts or accessories, body, or engine of or for such vehicle purchased, received, or acquired by him, a description of every said vehicle part or accessory including numbers of or other marks of identification, if any, together with the date and the names and addresses of the person from whom each such vehicle, part or accessory was purchased, received or acquired. In the case of a motor vehicle, such description shall also include the trade name, the name of the maker, type, engine and serial number and vehicle identi-

- fication number in lieu of the engine and serial number and other distinguishing marks, and whether any number thereon have been defaced, destroyed or changed;
2. Every new or used vehicle, body, chassis or engine of or for such motor vehicle sold, exchanged, or disposed of by him including numbers of or other marks of identification, if any, together with the date and the names and addresses of the persons to whom each vehicle was sold, exchanged, or disposed of by him. In the case of motor vehicles, such description shall also include the trade name, the name of the maker, type, engine and serial number and vehicle identification number in lieu of the engine and serial number and other distinguishing marks and whether any numbers thereon have been defaced, destroyed or changed;
 3. Every vehicle wrecked, dismantled or rebuilt by him and the date of its wrecking, dismantling or rebuilding;
- (b) Every licensee shall have in his possession a separate certificate of title assigned to him or other documentary evidence of his right to possession of and for every vehicle, part or accessory in his possession.
- (c) Every licensee shall have in his possession a separate salvage certificate issued to him as evidence of his right to possession of any vehicle in his possession.
- (d) Every person licensed as a transporter under Chapter 5 of this Act shall maintain for 3 years in such form as the Secretary of State may by rule or regulation prescribe at his principal place of business a record of every vehicle transported by him, including numbers of or other marks of identification thereof, the names and addresses of the persons from whom and to whom such vehicle was delivered and the dates thereof.
- (e) Every record required to be maintained under this Section shall be opened to inspection by the Secretary of State or his authorized representative or any peace officer for inspection at any reasonable time during the night or day.